



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/173614

PRELIMINARY RECITALS

Pursuant to a petition filed April 7, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify a Medical Assistance (MA) prior authorization request for physical therapy (PT), a hearing was held on May 11, 2016, at Green Bay, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the agency correctly modified a request to require the transition to school therapy.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Written submission of [REDACTED] PT, DPT

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a three-year-old resident of Brown County who receives MA.
2. Petitioner's diagnosis is listed as "Delayed Milestone in Childhood." He also is shown to have Down syndrome and decreased strength and balance.
3. The DHCAA approved 26 PT sessions through Cerebral Palsy, Inc. in April, 2015, and then 12 sessions to run from October, 2015 through January 8, 2016. Knowing that petitioner began to

attend early childhood school, the approval for the second authorization included the following: “Would expect transition to SBS [school-based services] at end of this PA.”

4. Petitioner receives PT at school focusing on increasing strength and balance while walking and squatting to pick things up.
5. On December 21, 2015 Cerebral Palsy, Inc. requested authorization for 16 weekly PT sessions to run from January 9 through April 30, 2016, PA no. [REDACTED]. The DHCAA responded by asking how the services differ from school services and what coordination has occurred with other therapy providers. No evidence of coordination with school providers was provided. The response to the question of how services differ was simply to refer to the school IEP and note that there is no duplication.
6. By a letter dated February 22, 2016 the DHCAA modified the request to approve four private PT session with the note that the four sessions should finalize a home exercise program and complete the transition to school-based therapy.

DISCUSSION

Physical therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider’s responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of “medical necessity” found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient’s illness, injury, or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient’s symptoms or with prevention, diagnosis or treatment of the recipient’s illness, injury or disability; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 6. Is not duplicative with respect to other services being provided to the recipient; ...
 8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The DHCAA interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

The primary reason for the denial of services in this case is that petitioner is receiving services in school that are meant to address the same issues that the private therapy is addressing. Petitioner’s mother testified to the differences in the focuses between the two therapies, but the agency case summary dated

April 25, 2016 essentially rebuts that the services are different. They are both treating deficits in balance and strength. The department has long held the position that school therapy and private therapy basically address the same deficits and use the same techniques. Thus for private therapy to be approved when school services are in place, there must be some deficit or deficits that the school therapist cannot address. The department has refused to accept that the difference between school and private therapy can be that the school therapy addresses school concerns while the private therapy addresses home concerns. See Final Decision no. MPA-37/80183, dated February 16, 2007, which reaffirmed that analysis as it concerns speech therapy; the rules/policies for speech and physical therapy are identical.

Furthermore, there is no evidence whatsoever that there has been coordination between the school therapist and the private therapist. When asked about coordination the private therapist responded about coordination with petitioner's grandparents who provide home care for him; nothing was mentioned about the school therapist. When asked about the difference between school and private therapy the Cerebral Palsy therapist simply referred to the IEP without specifying any differences.

I conclude that the modification was appropriate in this case and in fact it probably was overly generous in allowing even the four transitional steps. It is obvious that there has been no coordination between school and Cerebral Palsy, Inc. and that the basic issues being addressed by the two providers are essentially the same. Under those conditions the DHCAA regularly denies private therapy requests, and in this case there is no basis to approve additional sessions beyond the ones approved by the DHCAA.

CONCLUSIONS OF LAW

The DHCAA modification of a request for PT services was appropriate because petitioner receives PT in school and there is no showing that the private therapy differs from or is coordinated with the school therapy.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

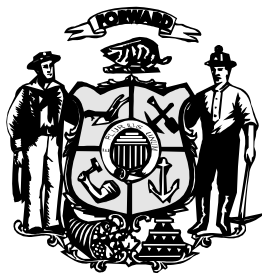
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of May, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 23, 2016.

Division of Health Care Access and Accountability